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No. (D)

Supreme Court, U.S.
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In the

Supreme Court of the United States

WILLIAM C. BOND,

Petitioner,

v.

THE UNITED STATES ATTORNEY FOR THE DISTRICT OF MARYLAND, *ET AL.*,

Respondents.

On Petition for Writ of Certiorari
to the U.S. Court of Appeals
for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. DOES THE FREEDOM OF INFORMATION ACT REQUIRE THE US ATTORNEY FOR THE DISTRICT OF MARYLAND TO PRODUCE THE 'FINAL REPORT' IN THEIR POSSESSION CONCERNING THEIR TEN-MONTH-LONG CRIMINAL INVESTIGATION INTO PETITIONER'S ALLEGATIONS OF 'FRAUD UPON THE COURT' IN A 2001 COPYRIGHT CASE; AND DID THE DISTRICT COURT ERR IN ALLOWING A 'SEARCH' FOR THE RECORDS WHICH WAS CONDUCTED AND AVERRED TO BY A THIRD PARTY?

II. ARE A US DISTRICT JUDGE'S TELEPHONE RECORDS OBTAINABLE UNDER THE FOIA WHEN THEY ARE IN THE POSSESSION OF THE GENERAL SERVICES ADMINISTRATION?

III. SHOULD THIS COURT EXPAND UPON THEIR DIRECTIVES TO THE LOWER COURTS ISSUED IN HAINES V. KERNER, 404 U.S. 519, 92 S. CT. 594 (1972) WHEN IT COMES TO *PRO SE* LITIGANTS ATTACKING POLITICALLY SENSITIVE CASES IN THE CIVIL ARENA?

PARTIES TO THE PROCEEDINGS

This Petition arises out of one (1) Fourth Circuit appeal:

1. **Fourth Circuit case no. 08-1320:**

   The Petitioner is:

   William C. Bond.

   The Respondents are:

   The United States Attorney for the

   District of Maryland, Northern Division; & the United States District Court for the District of Maryland.

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CITATIONS TO OPINIONS BELOW

The decisions and opinions below in appeal no. 08-1320 are: the United States Court of Appeals for the Fourth Circuit issued an unpublished Judgment and Opinion on September 12, 2008. (Petitioner's Appendix A-1). (Hereinafter "A-1," etc.)

The Honorable William D. Quarles, Jr., for the United States District Court for the District of Maryland, Northern Division, issued Orders on February 13, 2008 (A-3); November 20, 2007 (A-8); September 4, 2007 (A-19); June 6, 2007 (A-21); and May 17, 2007 (A-24).

JURISDICTIONAL STATEMENT

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1). The Judgment of the United States Court of Appeals for the Fourth Circuit, for which Petitioner seeks review, was entered on September 12, 2008. (A-1).

STATUTES INVOLVED

The statutes, rules, and regulations involved in this case are 5 U.S.C. § 552, 18 § U.S.C. 3771, 28 U.S.C. § 455, 28 U.S.C. § 516 , Fed. R. Civ. P. 15, 56 & 59, C.F.R. 45.10 & 50.15, & United States Attorneys Manual 4-5.412, 9-2.020, 9-2.120, 9-27.120, 9-27.130, 9-27.200, 9-27.220, 9-27.230, 9-27.240, 9-27.250, 9-27.260, 9-27.270.

INTRODUCTION

This is a Freedom of Information Act case. This case arises out of three Fourth Circuit appeals concerning the doctrines of 'Fraud Upon the Court,' 'Judicial Disability and Immunity,' the 'FOIA,' and the rights this Court has guaranteed '*pro se*'

litigants. The cases which became appeal no. 07-1720 (hereinafter the Fed. R. Civ. P. 60(b) "Motions" case), appeal no. 08-1171 (hereinafter the Fed. R. Civ. P. 60(b) "Independent Action" case), and appeal no. 08-1320 (hereinafter the "FOIA" case) were initially heard by three separate justices before the US District Court for the District of Maryland. The US Court of Appeals for the Fourth Circuit first joined all three appeals, then severed the FOIA case from the other two.[1] Hereinafter, the respondents in the two FRCP 60(b) cases will be referred to as "the Blum Respondents" or the specific individual or entity; and the respondents in the FOIA case will be referred to as the "Government" or the specific entity. Petitioner proceeds *pro se* in this case out of necessity because of the unpopular and unusual nature of this action in Maryland.

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[1] Petitioner, after being denied by this Court his MOTION TO CHIEF JUSTICE JOHN G. ROBERTS TO GRANT LEAVE TO FILE A PETITION FOR WRIT OF CERTIORARI IN EXCESS OF THE WORD LIMITS on December 4, 2008, has decided to file his Petition in the FRCP 60(b) cases separately with this Court. Petitioner will be asking by Motion that both these Petitions be considered together.

STATEMENT OF THE CASE[2]

Petitioner is the author of the unpublished copyrighted manuscript *Self-Portrait of a Patricide: How it feels to get away with Murder.*[3]

Petitioner, through counsel, filed an action for copyright infringement (hereinafter the "Copyright Case") in 2001 concerning the Blum Respondents theft of his unpublished manuscripts[4] from the law offices of his deceased attorney for use in both a collateral child custody case and a collateral criminal prosecution of Petitioner in Maryland. The District Court ignored all evidence of the theft of the manuscript, ruling that the use of even an entire unpublished manuscript in a child custody proceeding was 'fair use' under 17 U.S.C. § 107. The District Court then awarded attorneys' fees to the individual Blum Respondents in the amount of

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[2] The Introduction, Statement of the Case, and Conclusion in the FRCP 60(b) Petition and those in this FOIA Petition are nearly identical, as they arise out of the same facts and circumstances.

[3] Both the Blum Respondents' and Petitioner's former counsel below have misidentified the title of this manuscript in numerous court filings. Further, the manuscript had many different titles and variations over the eight-plus years of its development. The above title was crafted by Petitioner's literary agent in anticipation of publishment in 1994. In 2001, the stolen manuscripts in question comprised one of only two known copies in existence.

[4] The Blum Respondents stole other papers as well. The main manuscript presented by the Blum Respondents to the District Court in 2001 contained several different parts of different versions of the manuscript, including two 'conclusion' chapters. 'Their' manuscript also did not have several parts added by Petitioner at later dates. By no means was this a finished or definitive work.

$28,726.05 plus interest. The US Court of Appeals for the Fourth Circuit affirmed the District Court's decision and, in their Opinion, allowed the Blum Respondent law firms attorney's fees in regard to their *pro se* representation of their own firms. On remand, the District Court awarded the law firms $153,018.09 plus interest. This Court denied certiorari. See, Bond v. Blum, 317 F.3d 385 (4th Cir. 2003), cert. denied, 540 U.S. 820 (2003).

At the suggestion of the District and Fourth Circuit Courts, Petitioner then sued the Blum Respondents and their accomplices in three Maryland state tort actions for, among other things, conversion and invasion of privacy in regard to the stolen manuscripts. The Blum Respondents and their accomplices countered by actively urging the Maryland local and appellate Courts to take Judicial Notice of the Opinions by the District and Fourth Circuit Courts in regard to the manuscript theft and privacy issues, which the Maryland Courts, in fact, used as justification to dismiss those claims.[5] The

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[5] Petitioner did obtain a settlement from Blum Respondent accomplice Robert N. Grossbart, Esq., in regard to his legal malpractice committed against Petitioner. Grossbart was Petitioner's former attorney and accountant and advised the Blum Respondents on Petitioner, his manuscripts, and where and how to go get them. This information, and much more, was hidden from the District Court in 2001. All the information Petitioner has on the misdeeds of the Blum Respondents comes from the discovery in Grossbart which was narrow and limited to the issues in that case.

Petitioner's lawsuit against the wife of his deceased attorney who originally converted Petitioner's manuscripts from the offices of her deceased husband's law firm and who then gave them to Respondent Hodgson is still pending in the Maryland Court of Special Appeals.

main Maryland state tort action against these same Blum Respondents was denied *certiorari* by the Maryland Court of Appeals in late 2006.

In June 2004, at the invitation of the US Attorney for the District of Maryland, Thomas M. DiBiagio, Petitioner made a criminal referral to the US Attorney for the District of Maryland about the crimes he alleges here in this Petition. Petitioner met with and supplied the Chief, Criminal Division, US Attorney for the District of Maryland information to support his allegations multiple times. Petitioner was led to believe that the US Attorney was going to prosecute his allegations. Then, once Mr. DiBiagio was forced out as US Attorney as part of the now famous DOJ shakeup and after a ten-month-long investigation, Petitioner's referral was declined out of "discretion" in May 2005, then redeclined after a new look at the case by the new US Attorney for the District of Maryland, Rod J. Rosenstein, in October 2006.

On April 26, 2007, Petitioner filed, *pro se*, his Fed. R. Civ. P. 60(b) Motions case in the Maryland District Court questioning whether a United States District Judge should grant recusal or the vacatur of his underlying Copyright Case Judgment when it was discovered that he had repeatedly concealed *extrajudicial* knowledge of Petitioner from Petitioner and his Attorney below, and whether the same United States District Judge may remain the fact finder in a post Judgment action when his conflicts included: that his college 'roommate' and good friend was sued by Petitioner and that the 'roommate' and friend was to be a witness in the underlying case; that Petitioner made criminal and ethical complaints about the Judge and the friend; that the post

judgment action concerned, as a primary fact, the Judge's own actions; that Petitioner made criminal and ethical complaints about one of the attorneys in the underlying case who was once law partners with the Judge; that Petitioner had sued under the FOIA the US Attorney for Maryland and the US District Court for Maryland for, among other things, information about Petitioner's criminal referral about the Judge's actions and for the Judge's telephone records in question; and whether the Judge may continue to stay in the case when his current 'best friend' and golfing buddy, whom the Judge also collaborated with on books, is representing the primary witness in the underlying case, Respondent Miriam Pessin, and who has used the Judge's underlying Opinion to defend Respondent Pessin in the Maryland state tort action against her? Finally, during the recent appeal of these matters to the Fourth Circuit, Petitioner also questioned whether the Judge's discretion was further imperiled when it was suddenly discovered that, in addition to all the above, he belonged to a small, private, and exclusive law club with not only several of the Blum Respondent's attorneys, but also several of the actual Blum Respondents themselves and/or law firm partners of the Blum Respondent law firms, as well as the attorney representing Respondent Pessin, who, again, just happens to be the subject Judge's current 'best friend?'

Petitioner questioned whether the Defendants, Witnesses, Other Persons, and Attorneys in the underlying Copyright Case may commit perjury, suborn perjury, obstruct justice, and commit other crimes to win the Copyright Case with the intention of using the literary works at issue to take the minor

children in the collateral custody case away from the mother who raised them their entire lives so that a pathologically obsessed grandfather, a la` the movie *Chinatown*, and his lackey former son-in-law, himself a habitual crack cocaine addict, may acquire custody of said children and, in the process, have the State of Maryland, in a second collateral case, convict and imprison Petitioner for ten years for the act of possessing handguns in a locked safe?[6]

Petitioner also questioned whether these same Defendants, Witnesses, Other Persons, and Attorneys may use their illegally gained Judgments and Orders to win collateral Maryland state tort cases, using the underlying District and Fourth Circuit Judgments, as *Res Judicata*, Estoppel, Issue Preclusion, or Judicial Notice, and thus, making the District and Fourth Circuit Courts co-conspirators to their racketeering?

On May 4, 2007, Petitioner filed, *pro se*, a FOIA lawsuit against the United States Attorney for the District of Maryland and the United States District Court for the District of Maryland asking for all information regarding Petitioner's criminal referral in 2004-6, the underlying Copyright Case District Court Judge's telephone records, and the "attorney disqualification motions" in the 'Bromwell Case' regarding Respondent Gerard P. Martin, Esq., one of the Blum Respondents' lawyers in the Copyright

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[6] The criminal case against Petitioner, which he defeated, was premised upon the notion that a juvenile commitment to a mental hospital made him ineligible to possess handguns, even though the State of Maryland had given Petitioner a 'concealed carry permit' to possess such weapons and the Ohio law under which he was adjudicated offered "no civil disability" for delinquency.

Case below and the FRCP 60(b) cases presently, a former law partner of the Judge in question, and the 'architect' of the "Fraud Upon the Court" alleged by Petitioner.[7] Jurisdiction of the United States District Court for the District of Maryland was invoked pursuant to 5 U.S.C. § 552(a)(4)(B).

On May 24, 2007, Petitioner also filed, *pro se*, a Fed. R. Civ. P. Rule 60(b) Independent Action seeking monetary damages and alleging racketeering by the Blum Respondents, using these same underlying facts as presented here in this Petition. Although Petitioner asked the District Court to Join this Action with his other FRCP Rule 60(b) Action, the Court did not. In fact, as stated before, all three of Petitioner's cases were assigned to different United States District Court judges, which caused Petitioner to complain later to the Fourth Circuit that his litigations were treated as if a "tag-team wrestling match."

The Maryland District Court ruled first on the FRCP 60(b) Independent Action case, dismissing the case before summonses were issued, and while claiming Petitioner "failed to state a claim upon which relief could be granted," the Court went outside the record and, literally, reading from the

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[7] That the US Attorney for Maryland sought fit to ask for and be granted the disqualification of Gerard P. Martin, Esq., as counsel in the biggest political corruption prosecution in Maryland by the Government in twenty years was what led Petitioner to believe that he finally had a chance to over come the complete character assassination perpetrated upon him by the Blum Respondents and the Court. It should be noted that Mr. Martin was the Chairman of the Maryland State Bar Association's Standing Committee on Ethics during the operative times of Petitioner's allegations.

earlier Fourth Circuit Opinion of 2003, stated that the Courts had already considered these issues and that Petitioner's claims were barred by *res judicata*, etc., despite the fact that Petitioner's allegations of "Fraud Upon the Court" were never raised below. Petitioner countered with two FRCP 59 Motions, claiming that the Court had converted the dismissal to one under FRCP 56 and that the Court had taken the actual place of the Defendants who were not even served, which were denied.

Then the original, and subject, District Court Judge in the underlying Copyright Case dismissed the FRCP 60(b) Motions case, now citing the above order by his brother Judge as the deciding basis. In neither case was even one allegation made by Petitioner considered in any manner.

Finally, a third Maryland District Court Judge, after approximately fifty-nine (59) docket entries, including the production of three (3) 'Vaughn Indexes,' and court ordered settlement conference, upheld the granting of summary judgment to the Government in the FOIA case, stating that all the documents in the Government's possession were covered by FOIA exemption (b)(5) without any analysis as to whether any of the withheld documents were the 'final report' that must be released under the FOIA. (A-3, A-8).

Petitioner filed, *pro se*, timely appeals in all three cases.[8] The US Court of Appeals for the Fourth

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[8] Petitioner first filed a Petition for Writ of Mandamus in the FOIA case alleging that the District Court had usurped their authority, which was denied by the Fourth Circuit under the premise that mandamus was unavailable to those who enjoy the right of appeal.

Circuit, in unpublished opinions, affirmed the Maryland District Court's rulings on September 12, 2008 and September 19, 2008, respectively, giving no other basis for their rulings, and completely ignoring the facts that Petitioner had brought valid claims before the Court and that his *pro se* rights had been obliterated.[9] (A-1).

ARGUMENT FOR GRANTING THE WRIT

The District Court's ruling in the FOIA case is in direct conflict with holdings by this Court and numerous holdings by other Courts of Appeals. Further, this Court should settle two areas of the law which are clearly gray: (1) this Court should settle the FOIA exemption nightmare created by the overwhelming use of Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974) in FOIA cases and give FOIA litigants a simple and clear path for obtaining the 'final report' entitled to all FOIA litigants[10]; and (2) this Court should

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[9] Petitioner filed formal-style papers and briefs with the District and Fourth Circuit Courts.

[10] FOIA cases have a "unique nature," namely the plaintiff-requestor's lack of access to documents. As FOIA cases are almost always resolved at summary judgment, FOIA cases have a severe conflict with *due process* because the requesting party often does not have access to the factual information upon which the moving party relies. The obvious missing step is that the party seeking disclosure does not have access to the materials necessary to be a fully capable advocate for his position, especially when it comes to determining what facts are undisputed in regard to summary judgment arguments. As the Courts overwhelmingly accept Government affidavits and almost always deny discovery in FOIA cases, the present application of the FOIA law deprives already disadvantaged litigants, many acting *pro se*, who cannot see the documents

expand on their directives to the lower Courts issued in Haines v. Kerner, 404 U.S. 519, 92 S. Ct. 594 (1972) when it comes to *pro se* litigants attacking politically sensitive cases in the civil arena out of necessity because members of the Bar refuse to get involved.[11]

Further, this action represents a complete departure from the accepted and usual course of judicial proceedings, and the blind sanctioning of same by the Fourth Circuit, as to call for the exercise of this Court's supervisory power.

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they are requesting, of a full and fair trial on the merits of their case.

This Petitioner suggests that the proper and simple remedy to this conundrum would be for first, the production of the 'final report' by the Government, then the claim of exemptions, not vice-versa. This solution would level the 'playing field,' enforce the letter and intent of the law, and save countless hours of Court, Government, and individual litigant's time and valuable resources which are currently wasted by the tail-wagging-the-dog application of FOIA law in present day FOIA litigation.

[11] This Court has stated that "[t]he basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." NLRB v. Robbins Tire & Rubber Co., 437 US 214, 242 (1978).

I. THE DISTRICT COURT'S DISMISSAL OF THE FOIA CASE WHEN NO ANALYSIS HAD BEEN CONDUCTED AS TO WHETHER A 'FINAL REPORT' EXISTED IS IN CONFLICT WITH THE HOLDING IN N. L. R. B. V. SEARS, ROEBUCK & CO., 421 U.S. 132, 95 S. Ct. 1504 (1975) AND THE HOLDINGS OF OTHER CIRCUIT COURTS?

This case is about whether the Government may use 5 U.S.C. § 552(b)(5) as an excuse, upheld below, not to produce their 'final report' regarding a criminal investigation into corruption and public corruption in the US Court House concerning the underlying Copyright Case in 2001. (A-5).

This case is also about whether a US District Court may rule in a case when the District Court itself is also a named Defendant in the very same case; and whether the District Court may rule in a case when its own attorney – the US Attorney – in the case at issue, is also being sued in the very same case for information regarding their prior alleged investigation of one of the Judges of the very same US District Court.

Additionally, this case is about whether Defendants in a FOIA action may simply ignore answering whole categories of requested information in a Plaintiff's complaint in any substantial way and whether the District Court committed clear error by allowing this conduct.

A FOIA lawsuit is primarily about the 'final report.' For a FOIA case to exist with sixty-one (61) docket entries without the Respondent United States Attorney for the District of Maryland (hereinafter "USA Maryland") nor the Respondent US District

Court for the District of Maryland (hereinafter "US Court Maryland") to ever mention one time, in any way, the words 'final report' just highlights Petitioner's very serious concerns regarding the impartiality of the Court and the conduct of these proceedings below.

Further, although Petitioner wishes he had a 'search warrant' for the Government's offices and computers, and depositions with their officers, etc., the fact is he did not have those things. It was only by the sloppy mistake by the Government in their release of their one released-in-part (RIP) document to Petitioner that all the evidence this Court needs to decide this issue was discovered.

> "I'm looking for the declin memo now." – Barbara S. Sale, Chief, Criminal Division, US Attorney for the District of Maryland, May 9, 2007, email directed to unknown party.

While the District Court labeled this as a "scintilla," it sure sounds like a 'final report' to this Petitioner. (A-10).

A. The 'Final Report'

As a matter of law, under 5 U.S.C. § 552(a)(2)(A), Petitioner is entitled to a 'final report.'

Petitioner has proved, by the Government's own multiple 'Vaughn Indexes,' that substantial documents exist, which, by definition, must include the 'final report,' no matter what "folder" the Government chooses to store said report in. There is substantial case law and precedent, in addition to common sense, that the last memorandum or report in possession of the Government on Petitioner's

criminal referral is the 'final report' for release purposes under FOIA.

The District Court had a duty and obligation under the law to find and release this 'final report' to Petitioner. The District Court also had a duty and obligation to see what other memorandum, reports, factual information, etc., are releaseable because their findings are sustained in the 'final report.'

That the District Court sent this case to appellate litigation under the facts at Bar is "objectively unreasonable" and "manifestly unfair" and reeks of a 'cover-up' and 'whitewashing' of the facts in an attempt to save the District Court and US Attorney from scandal and embarrassment.[12]

B. 'Final Report' Analysis

For the sake of argument, let's assume that the 'search' and 'affidavit' produced by Respondent USA Maryland below are acceptable. Let's also assume that the stated eleven (11) pages of withheld-in-full (WIF) documents comprise the US Attorney's complete investigation into the subject matters. Well, then, the Government's reliance on FOIA Exemption (b)(5) is a sinking ship, for the 'final report' as a matter of law, and extensive 'case law,' is the final document which describes the final action taken by the agency and their reasons for those actions. Thus, under this scenario, the 'final report' necessarily is one of the (WIF) documents which the District Court saw no reason to examine. But see: "Exemption relating to "intraagency memoranda"

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[12] The Government actually claimed in one of their three (3) 'Vaughn Indexes' that the withheld-in-full (WIF) documents contained "embarrassing" information.

does not apply to any document which falls within the meaning of the phrase "final opinion * * * made in the adjudication of cases" which makes such opinions disclosable." N. L. R. B. v. Sears, Roebuck & Co., 421 U.S. 132, 138, 155, 95 S. Ct. 1504, 44 L. Ed .2d 29 (1975). (Emphasis added.)[13]

"The deliberative process exemption from disclosure requirements of this section does not protect final statements or policies or final actions of agencies which have the force of law or which explain action which the agencies has already taken, nor does it protect communications that promulgate or implement an established policy; rationale underlying the "final opinion" exception to the deliberative process rule is to prevent agencies from developing a body of "secret law" veiled by the privilege of Exemption 5." Brinton v. Department of State, 636 F.2d 600 (D.C. Cir. 1980), cert. denied, 452 U.S. 905, 101 S. Ct. 3030, 69 L. Ed. 2d 405 (1981) (Emphasis added.)

"Advice and appeals memoranda which explained decisions by the General Counsel not to file an unfair labor practice complaint with National Labor Relations Board were disclosable "final opinions" made in the adjudication of the case and fell outside the scope of exemption relating to "intraagency memoranda." N. L. R. B. v. Sears, Roebuck & Co., 421 U.S. 132, 138, 155, 95 S. Ct. 1504, 44 L. Ed .2d 29 (1975). (Emphasis added.)

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[13] The District Court relied on this very same case as their justification not to conduct further analysis as to the Government's withheld documents (A-13, A-14)

Thus, there is no question that a 'final report' exists and that, in all probability, all the documents in possession of the Respondent USA Maryland comprise 'concurring' and/or 'dissenting' opinions sustained in the 'final report,' factual evidence, as well as the 'final report' itself. Naturally, all these documents resubmitted and resulting thereof in regard to the second investigation and 'decline' by the new US Attorney for Maryland, Rod J. Rosenstein, are post decisional and must be produced.

II. MAY THE DOJ'S EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS FOIA/PA UNIT, ACTING AS A LAW FIRM FOR THE DEFENDANT UNITED STATES ATTORNEY FOR THE DISTRICT OF MARYLAND, SIGN THE USA MARYLAND'S AFFIDAVIT AS TO THE 'SEARCH' REQUIRED UNDER THE FOIA?

The Government relied completely upon a 'declaration' made by an employee of the Executive Office of United States Attorney's Office of Information and Privacy (hereinafter "EOUSA OIP" and/or "OIP"). This 'declaration' also argued the case and case law even though the writer was not admitted to the Maryland Federal Bar and other gross violations of the FRCP and Local Rules.

But, the law is clear: Fed. R. Civ. P. 56(e) says that an affiant must have "personal knowledge." Forgetting that the OIP employee was not a party – Petitioner compared this practice to a Mafia Don's law firm signing his affidavit about hidden Swiss banking accounts – the OIP employee had only third party knowledge of the 'search' by communicating

with representatives (the 'FOIA Contact') of the USA Maryland by unknown means. In fact, the EOUSA OIP employee conducted no search at all. As a matter of law, and as a statement of obvious fact, there was no search conducted under the FOIA which was in compliance with the law.[14] Petitioner vehemently pointed this out to the District Court below.

A. 'Search' Analysis

An agency must make search and must sign affidavit, not another agency acting as "law firm." Clearly, the US Attorney for the District of Maryland is a separate "agency" under the FOIA. See: "Entity in executive branch that has separate staff and firm structure is "establishment in the executive branch" and therefore meets first prong of test to determine whether entity is agency and is subject to Freedom of Information Act (FOIA)." Armstrong v. Executive Office of the President, 877 F. Supp. 690 (D.D.C. 1995), rev'd., Armstrong v. Executive Office of the President, 90 F.3d 553 (D.C. Cir. 1996), cert. denied, 520 U.S. 1239, 117 S. Ct. 1842, 137 L. Ed. 2d 1046 (1997).

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[14] If the drafters of the FRCP wanted to make an exception for the Government as Respondent USA Maryland desires, they would have stated it in the FRCP as they did, for example in FRCP 4.

The Government is a 'monstrously' large entity. If the District Court's *per se* Ruling at footnote no. 2 of their Memorandum Opinion dated February 13, 2008 stands (A-5), the Government has a 'case law' ruling for plausible deniability. Simply, this Court must enforce the simple rules of the FRCP.

An agency must make their own affidavit as to the 'search.' The US Attorney for the District of Maryland has offered no affidavit as to the 'search' in this case below. See: "District Court had no factual basis for its determination that the Federal Bureau of Investigation's (FBI) search for records responsive to Freedom of Information Act (FOIA) request for records pertaining to requestor was adequate, **since FBI did not submit an affidavit describing its search.**" Abdelfattah v. U.S. Dept. of Homeland Sec., 488 F.3d 178 (4th Cir. 2007). (Emphasis added.)

And even if this Court was to consider the 'search' as lawful, it was not "reasonable" or "objective" considering the facts raised by Petitioner below, including identifying the actual AUSA who conducted the investigation. Petitioner brought evidence to the District and Fourth Circuit Courts which was overwhelmingly more than a "scintilla" which showed that the Government destroyed documents, that a 'final report' existed, emails not accounted for by the Government, of which Petitioner could produce many more, etc.

III. THE DISTRICT COURT'S TREATMENT OF PETITIONER, AFFIRMED BY THE FOURTH CIRCUIT, VIOLATES THIS COURT'S HOLDING IN HAINES V. KERNER, 404 U.S. 519, 92 S. CT. 594 (1972) AND THE FOURTH CIRCUIT'S OWN PRECEDENT

A. The Recusal Issues

Recusal is mandatory. 28 U.S.C. § 455(a) states: "Any justice, judge, or magistrate judge of the United States **shall disqualify himself in any**

proceeding in which his impartiality might reasonably be questioned." (Emphasis added.)

> "Section 455 tells judges when recusal is required but does not spell out the appropriate remedy for a failure to recuse. In Liljeberg v. Health Services Acquisition Corp., the U.S. Supreme Court held that Federal Rule of Civil Procedure 60(b), authorizing relief from a final judgment, is an appropriate remedy for a trial court's improper failure to recuse. The Court cautioned that Rule 60(b)(6) relief is "neither categorically available nor categorically unavailable for all § 455(a) violations." Rather, "there is surely room for harmless error committed by busy judges who inadvertently overlook a disqualifying circumstance."
>
> In spelling out the factors to be considered in determining whether a new trial is the appropriate remedy, the Court cautioned against too casual a finding of harmless error:
>
> [I]t is appropriate to consider the risk of injustice to the parties in the particular case, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in the judicial process. We must continuously bear in mind that "to perform its high function in the best way 'justice must satisfy the appearance of justice.'"[15]

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[15] Quoted from: Recusal: Analysis of Case Law Under 28 U.S.C. §§ 455 & 144 by Alan Hirsch, Federal Judicial Center, 2002.

B. Pre Filing Issues

The Chief Judge of the US District Court for the District of Maryland was Petitioner's FOIA contact during the administrative period of Petitioner's FOIA request from the Respondent US Court Maryland. While it appears impossible that the Chief Judge, nor the US Attorney, did not know the FOIA law – that the US Court is exempt – rather than notify Petitioner of that fact, as enumerated by the District Court Opinion below, (A-24) pre filing, instead the Chief Judge had the US Attorney, through their DOJ apparatus, process Petitioner's FOIA request, then deny Petitioner's FOIA request to the US District Court.[16]

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[16] There is no question that the US Court Maryland was represented in this matter by the US Attorney for Maryland.

28 U.S.C. § 516 *et seq.*, 28 C.F.R. 50.15 *et seq.*, and United States Attorney Manual 4-5.412 *et seq.*, controls the analysis of what Petitioner has claimed is an illegal, unethical, and unconstitutional engagement between the US Court Maryland and the USA Maryland in this matter.

Despite the fact that the DOJ represents the Government, there are very severe constitutional and due process questions raised when the executive and judicial branches get into bed together, for any reason, especially when the US Attorney for Maryland conducts so much business in the Maryland District Court. Not withstanding 28 U.S.C. § 516 *et seq.*, Petitioner has very serious doubts as to whether the proper request and analysis for representation was made in this case as per 28 C.F.R. 50.15 & USAM 4-5.412. There is no question that the records sought were not created in the scope of employment of the subject Judge, nor is there any legitimate interest of the United States in helping the subject Judge to subvert the law. In fact, Petitioner has alleged that the same body defending this action, also investigated these same events in 2004-2006. There is an obvious and total conflict between the US Court Maryland and the US Attorney for Maryland in this case.

Petitioner immediately pointed out several mistakes regarding these matters to the Government's representatives, pre filing, but never heard one word in return.

Further, it is a fact that the Chief Judge of a US District Court, by statute, is in charge of case assignations.[17] Because the Chief Judge was acting as a party and/or party representative, he should not have been involved in the assignation of the FOIA case, yet the record is barren as to his recusal from same.

C. Post Filing Issues

ISSUE 1

Petitioner asked that the District Court recuse itself in this case because the Court should not, and could not, rule on itself. Petitioner also made the Court aware of its conflict with its own counsel, the US Attorney for Maryland. The Court denied the Recusal Motion and dismissed the US Court

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There is no question that these records sought, under the circumstances, could not be viewed to have been produced as part of the subject judge's official capacity, nor would they reasonably appear to have been performed within the scope of his federal employment.

In fact, these communication records are illegal and non allowed types of communications on government equipment and, while in the possession of the Government, are really the individual records of the subject judge reflecting his individual actions which he has denied, repeatedly, in answering various motions to recuse.

Petitioner has alleged that these records will prove unethical and/or illegal activity by the subject Judge.

[17] Petitioner was educated as to this fact by the website of the Administrative Office of the United States Courts.

Maryland as a party without any discovery whatsoever. Petitioner pointed out to the Court in a Motion to Reconsider that ruling that not only was waiver an issue the Court had not conducted any analysis of whatsoever, but that the Court's telephone records would be subject to the FOIA if they reached any other agency subject to the FOIA.

Later, Petitioner filed a Motion with the Court to reinstate the US Court Maryland as a Defendant as the Court's telephones are managed and controlled by the General Services Administration, making Petitioner's original position in this regard obviously meritorious. While Petitioner had only, at that time, recently learned these new facts, they must have been known to the Court, as this fact even pops up on the Court's own caller ID.[18]

Petitioner states to this Court that not only was the FOIA not intended for a US District Judge to hide his alleged illegal and unethical activities, but that these matters are subject both to the FOIA and to common law.

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[18] Certainly, under the FOIA, the Court must analyze the contract between the GSA and the Administrative Office of the US Courts to determine whose records these telephone records, in fact, are? "The burden is on the agency to demonstrate, not the requester to disprove, that materials sought in a Freedom of Information Act (FOIA) request are not agency records." Washington Post v. Department of Homeland Sec., 459 F. Supp. 2d 61 (D.D.C. Oct 19, 2006). Certainly, as well, as Petitioner's FOIA request to the Court was clearly mismanaged, Petitioner was entitled to have the Court allow leave to amend his pleading to add the GSA as a party. Finally, the question as to whether the Court waived their immunity by processing Petitioner's FOIA request through the DOJ is a valid claim requiring analysis by the Courts.

ISSUE 2

The District Court in the FOIA case wrongly dismissed the US Court Maryland as a Defendant, wrongly denied Recusal, wrongly denied Reconsideration, wrongly allowed the USA Maryland to ignore the Federal Rules of Civil Procedure in regard to answering a Motion with a letter, to ignore those same Rules in many other Court filings, and to not obey Local Rules regarding extensions of time, wrongly dragged the case out, wrongly denied Petitioner the opportunity of a Reply to a paper filed by USA Maryland out of order, wrongly allowed USA Maryland to ignore the Court Ordered Settlement Conference, and wrongly denied Petitioner all reasonable inferences in his favor to defeat Summary Judgment, including denying his Motion to Amend his Complaint,[19] among many other things.

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[19] Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978) clearly mandates some consideration toward *pro se* litigants.

> "[T]he Fourth Circuit takes the position that its district courts must be especially solicitous of civil rights plaintiffs. This solicitude for a civil rights plaintiff with counsel must be heightened when a civil rights plaintiff appears pro se. In the great run of pro se cases, the issues are faintly articulated and often only dimly perceived. There is, therefore, a greater burden and a correlative greater responsibility upon the district court to insure that constitutional deprivations are redressed and that justice is done. So, although the Court of Appeals cannot mean that it expects the district courts to assume the role of advocate for the pro se plaintiff, radiations from Burris strongly suggest that the district court must examine the pro se complaint to see whether the facts alleged, or the set of facts which the plaintiff might be able to prove, could very well provide a basis for recovery under any of the civil rights acts or heads

There is no question that any 'reasonable person' informed in detail of these facts would view the Court as violating the "objective standard" or "reasonable person standard" toward impartiality

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> of jurisdiction in the federal arsenal for redress of constitutional deprivations. Accordingly, the Court in considering the defendants' motion to dismiss will not permit technical pleading requirements to defeat the vindication of any constitutional rights which the plaintiff alleges, however inartfully, to have been infringed." Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978).

Petitioner has clearly made claims before the District Court which, if proved at Trial, would show that the USA Maryland illegally discriminated against Petitioner in "declining" to prosecute Petitioner's allegations of crimes against his person under the jurisdiction of the US Attorney not for any legitimate "discretion," but out of an illegal deprivation of Petitioner's rights under the law due to Petitioner's juvenile past and/or Petitioner's literary aspirations and/or illegal interference in the prosecution of Petitioner's claims by persons outside of the normal law enforcement process to politically protect the subject Judge and/or the institution of the US Court Maryland and/or former AUSA Gerard P. Martin and/or former FBI official Dudley F.B. Hodgson.

Petitioner has clearly made claims, as well, as to the illegal collusion between the US Court Maryland and the USA Maryland in this matter in violation of the law, the C.F.R., and the USAM, in which the USA Maryland clearly has provided illegal and non allowed gratuitous representation to the US Court Maryland for matters that are personal to the subject Judge, which they, themselves, in some form or another investigated, which are not in the "scope" of the subject Judge's official capacity of employment, and could not be of any legitimate interest to the United States.

Both of these claims are constitutional and/or civil rights claims.

and fairness to Petitioner repeatedly. These matters demanded recusal of the District Court in whole.[20]

ISSUE 3

The District Court assigned this case to a settlement conference before US Magistrate Judge James K. Bredar. At that conference, Judge Bredar stated to Petitioner without any solicitation or qualification whatsoever:

> "**No Judge of this Court, nor any Judge on the 4th Circuit, will ever allow you (Bond) to have the US Attorney's papers just because they (the US Attorney) did not dot all their 'i's' and cross all their 't's.'**" – direct quote of US Magistrate Judge James K. Bredar, at settlement conference in WDQ-07-1188, October 2, 2007.

This comment was chilling to Petitioner. But, now that he sees the Court's actions in totality, it is Petitioner's belief that the settlement conference was only a charade, in bad faith, to attempt to get Petitioner to dismiss his claims without any benefit to Petitioner in order to save the District Court from having to protect the US Court Maryland and the USA Maryland.

It is clear that the Magistrate Judge, speaking for the Court in whole, as well as the Fourth Circuit,

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[20] Petitioner asked the District Court in all three cases to Recuse in whole, to grant a change of Venue to the US District Court for the District of Columbia, and/or to appoint a specially assigned visiting Judge from outside the District of Maryland, which is exactly how the District Court would have handled matters had an Article III judge been charged with a speeding ticket on Federal lands.

spoke plainly and frankly as to the pervasive bias and prejudice which existed among the Bench toward Petitioner, as well as the very favorable conditions the US Attorney enjoyed with the Court.[21]

If these comments do not define the 'pervasive bias' standard for recusal for the District Court in whole, then nothing does.

D. Recusal Analysis

There is an exception to the general standard of review which is based upon *extrajudicial* sources.

> See, "General rule is that bias sufficient to disqualify judge must stem from extrajudicial sources, but there is exception where such pervasive bias and prejudice is shown by otherwise judicial conduct as would constitute bias against party." Whitehurst v. Wright, 592 F.2d 834 (5th Cir. 1979). See also, "On motion to disqualify federal judge, where grounds asserted as establishing bias are not derived from outside sources, movant must prove that complained-of actions displayed deep-seated and unequivocal antagonism that would render fair judgment impossible." U.S. v. Battle, 235 F. Supp. 2d 1301 (N.D. Ga. 2001). See also, "Favorable or unfavorable predisposition can serve to be characterized as "bias" or "prejudice" requiring recusal because, even though it springs from the facts adduced or the events occurring at trial, it is so extreme as to display clear inability to

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[21] As the docket shows, the FOIA case was temporarily assigned to the Magistrate Judge. Petitioner presented these allegations in an affidavit to the District Court.

render fair judgment; that is the "pervasive bias exception" to the extrajudicial source doctrine." Liteky v. United States, 510 U.S. 540, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994)

The comments of the settlement judge, speaking for himself, and the Court as a whole, are chilling to Petitioner's due process rights.

See, "Where trial judge's pretrial statement to third party at swimming pool pertaining to prospective trial of defendant did not comport with appearance of justice and it could not be said from record alone that defendant had received a fair trial, conviction and sentence were required to be vacated on claim of judicial bias." U. S. v. Brown, 539 F.2d 467 (5th Cir. 1976). See, Roberts v. Bailar, 625 F.2d 125, on remand, 538 F. Supp. 424 (6th Cir. 1980). See, Cobell v. Norton, 237 F. Supp. 2d 71 (D.D.C. 2003), mandamus denied in part, 383 F.3d 1036, 363 U.S. App. D.C. 228, issued 2004 WL 2059502, cert. denied, 125 S. Ct. 1325, 543 U.S. 1150, 161 L. Ed. 2d 113 (2005).

Petitioner has properly alleged that the individual acts combined with the totality of circumstances required recusal of the District Court in whole.

See, "Although Government's affidavit requesting disqualification of presiding judge in criminal antitrust action failed to prove any impropriety on part of defense attorney or serious misconduct on part of presiding judge, in light of the total facts there existed a reasonable likelihood that case might not be tried with impartiality litigants had a right to

expect and interests of justice required that cause be tried by another judge from outside the district." U. S. v. Ritter, 540 F.2d 459 (10th Cir. 1976), cert. denied, 97 S. Ct. 370, 429 U.S. 951, 50 L. Ed. 2d 319 1976). See also, "In determining whether to disqualify himself on ground of, among other things, that his impartiality might reasonably be question, a judge is to take into consideration all circumstances both those in public and hidden view and determine if a reasonable, uninvolved observer would determine that his partiality might be questioned and in making such assessment the judge is not limited to those facts presented by the challenging party as he would be in a motion under section 144 of this title, i.e., disqualification by way of affidavit asserting bias or prejudice, nor must he accept the asserted facts as true." State of Idaho v. Freeman, 507 F. Supp. 706 (D.C. Idaho 1981).

E. Civil Rights and/or Constitutional Deprivations

As mentioned, Petitioner raised issues of alleged illegal discrimination against his person by the USA Maryland. 18 U.S.C. § 3771 gives crime victims certain rights which 28 C.F.R. 45.10 mandates the government uphold.

The United States Attorney's Manual (USAM) states the protocols of Federal Prosecutions in Criminal Matters at Chapter 9. Chapter 9, Part 9-2.000 is titled *Authority of the United States Attorney in Criminal Division Matters/Prior Approval.* To be brief: 9-2.020 states that "Whenever

a case is closed without prosecution, the United States Attorney's files should reflect the action taken and the reason for it." 9-2.101 adopts the ABA standards. 9-2.120 speaks with regard to actions to be taken should the decision not to prosecute "deviate" from normal protocol or standards. There is to be a written reason for this. It also imposes limitations on the authority of the United States to decline prosecution, etc. The USAM at 9-2.155 & 3-18.200 speak of sensitive matters which would necessitate the involvement of higher authorities at DOJ. (i.e., the investigation of a US Judge.)

The USAM, Part 9-27.000 is titled *Principles of Federal Prosecution*. USAM 9-27.120, 130, 200, 220, 230, 240, 250, 260, and 270 are relevant to Petitioner's discussion that his rights have been violated by the US Attorney's Office in this matter and that there must be significant documents which exist which are not exempt under the FOIA which pertains to Petitioner's request and which the Government has, so far, not identified. Further, the issues regarding "discretion" in bringing charges is laid out in these parts. No where does it say that the Government may ignore a Federal crime when there is no other remedy available or that the victim may suffer without relief from known crimes in perpetuity. So, if this was the USA Maryland's position, then there should be papers regarding this deviation which certainly would center upon discrimination against Petitioner as their primary justification.

For example, Petitioner alleged and averred that the Government's main consideration in not prosecuting the alleged crimes against Petitioner was Petitioner's juvenile record and literary efforts,

not the crimes alleged and their substantial Federal interests and priorities already discussed. USAM 9-27.260 forbids that thinking. USAM 9-27.270 makes it mandatory that the US Attorney provide the reasons for the declination to prosecute in its files. Because of the sensitive nature of Petitioner's complaint, there should be numerous opinions by the local USA, AUSA's, and by the EOUSA, which would be sustained in the 'final report,' and thus, not exempt under the FOIA. A letter from the Criminal Chief to Petitioner declining prosecution for "discretion" does not cut the mustard in this case when it comes to reasons (plural). Alternatively, the US Attorney did nothing to see that any action which could be taken by another authority were advised as to Petitioner's position being meritorious. The US Attorney could have intervened somewhere, some place, in an effort to help Petitioner gain relief if they believed Federal prosecution was not the right remedy. But, if these papers are ever released, Petitioner is sure that they will show that the Government, or parts of the Government, certainly thought Federal prosecution regarding Petitioner's criminal referral in 2004-6 was appropriate. Then, someone or some group, put a stop to it, and, in the process, denied Petitioner any and all relief at the cost of hundreds of thousands of dollars in legal fees to Petitioner and the, seeming, loss of his copyrighted property forever.[22]

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[22] Petitioner introduced an affidavit to the District Court recounting his concerns over statements made by the Chief, Criminal Division, US Attorney for the District of Maryland to Petitioner during one meeting regarding prosecution of Petitioner's claims: "Of concern to me, at this meeting, was the statement that prosecution of my allegations could not be the

The USA Maryland did not, under any theory, have the "discretion" to do nothing while Petitioner continued to suffer the loss of his property, the illegal award of attorneys' fees by the Court to the Copyright Case Defendants, and the continued reuse in the Maryland state court actions of the defiled Opinions won in the District Court and the Fourth Circuit by the Copyright Case Defendants who obtained those Opinions via criminal acts.

The USA Maryland should have done something to help Petitioner, the victim, given that their power is almost unlimited. Instead, they did nothing, allowing Petitioner to be continually abused by the Copyright Case Defendants and other Courts because of their non action.

The District Court below had no right to ignore this very serious allegation, as well as the aforementioned alleged collusion against his person by the USA Maryland and US Court Maryland per the illegal representation by the Government, and had no choice but to allow additional fact finding into same or to direct Petitioner to file a separate Complaint(s).

F. The Telephone Records and Other Mischief

FRCP 15 states, in part, that "**leave shall be freely given when justice so requires**" to amend a complaint. Clearly, under the facts already argued, and under a Gordon analysis, Petitioner was entitled to have the USA Maryland answer his Amended Complaint in detail and to provide 'non conclusory'

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single component to their prosecution because of my background, that the US Attorney did not want to get involved in a "circus," as my other cases had become."

answers to their claimed exemptions, if claimed again.[23] Clearly, the US Court Maryland and/or their 'agent' GSA had no choice but to answer as to Petitioner's request for the subject US District Judge's telephone records.

The USA Maryland has only offered 'conclusory' and/or 'bad faith' replies to Petitioner's requests and his Complaint, including changing the caption of the case in three (3) Court filings without leave of the Court.[24] Clearly, the US Court Maryland waived their FOIA exemption.[25] Clearly, as well, the USA Maryland waived their FOIA exemption by using their claimed (WIF) documents against Petitioner in their papers.[26]

The District Court violated Petitioner's rights under FRCP 56 in odd numerous ways, especially the District Court's obligation to infer all reasonable facts in Petitioner's favor. Petitioner offered the District Court much more than a "scintilla" in regard to the evidence he presented below. The granting of

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[23] USA Maryland and the DOJ FOIA apparatus claimed third-party privacy concerns to deny nearly all of Petitioner's entire FOIA requests and Complaint. But, the law requires specific reasons for each and every denial under the FOIA. Further, it is hard to see how public officials or persons already prosecuted by the Government enjoy 'privacy' considerations at all?

[24] A finding of 'bad faith' negates the 'search' and 'declaration' offered by the Government under 5 U.S.C. 552(a)(4)(B).

[25] By processing Petitioner's FOIA request to the Court through the DOJ's FOIA apparatus.

[26] USA Maryland used (WIF) information in their possession, wrongly, to smear Petitioner in Court filings, which they later were forced to retract. (A-17, A-18).

summary judgment in this case was seriously flawed. In addition, the Court conducted no analysis under Gordon, to which Petitioner was entitled.

Finally, if the allegations of corruption and public corruption committed in a US Court House are not "compelling" enough reasons for the District Court to allow Discovery and Trial of these very important matters, one wonders what, in fact, the District Court would find compelling enough reasons under the FOIA? (A-5, A-14, A-15). This case is the exact reason that the FOIA exists.

CONCLUSION

A US District Judge may not modify the judgment of another US District Judge without the first Judge granting recusal or being disabled, yet this is exactly the position the US District Court for the District of Maryland put Petitioner in 2007 by assigning his FRCP 60(b) Independent Action to a different US District Judge than the original US District Judge in the Copyright Case, seemingly giving both US District Judges jurisdiction over the same underlying Copyright Case Judgment.[27] Further, common sense dictates that no US District Judge on the same US District Court is going to supervise investigations, under the FOIA, into misconduct, and investigations thereof, of his fellow US District Judge, or the Court in whole, without being persecuted, or being subject to persecution, by his fellow US District Judges.

Petitioner repeatedly pled with the US District Court for the District of Maryland for Recusal in whole, for a change in Venue, and/or for the Court to

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[27] Petitioner cannot find any precedent for this scenario.

assign these cases to a specially appointed visiting Judge from outside the jurisdiction. Police departments regarding their 'internal affairs investigations departments' have more protocols for handling the type of conflicts these cases presented than the District Court itself did. Coldly, the Fourth Circuit turned a blind eye to all claims made by Petitioner, giving no explanation for its decisions.

While Petitioner recognizes his odds are long in being granted *certiorari*, clearly the facts of this case and the law are on Petitioner's side. Every citizen of this country has the right to rehabilitate themselves and to bring honest claims before the proper forum to be judged upon the merits. In these cases, it has been always about Petitioner's past, rather than his valid claims.[28] Clearly, what has happened here is unconscionable. Petitioner is entitled to have his Petition for Writ of Certiorari granted, if not being granted summary relief in part or entirely.

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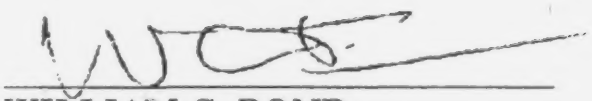
[28] While there is the obvious question as to whether Petitioner's literary efforts were in good taste, and despite the Fourth Circuit's shellacking of Petitioner in their 2003 Opinion regarding Petitioner, his incomplete juvenile record, and his incomplete manuscripts, possibly Petitioner's experiences in literary form might add to the national discussion on poor parenting and the overall decaying of values which pervades our society.

Respectfully presented,



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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-1320

WILLIAM C. BOND,

Plaintiff - Appellant,

v.

UNITED STATES ATTORNEY, District of Maryland, Northern Division; UNITED STATES DISTRICT COURT, for the District of Maryland,

Defendants - Appellees.

Appeal from the United States District Court for the District of Maryland, at Baltimore. William D. Quarles, Jr., District Judge. (1:07-cv-01188-WDQ)

Submitted: August 28, 2008
Entered: September 12, 2008

Before NIEMEYER, MICHAEL, and GREGORY, Circuit Judges.

Affirmed by unpublished per curiam opinion.

William C. Bond, Appellant Pro Se. Allen F. Loucks, Assistant United States Attorney, Baltimore, Maryland, for Appellees.

Unpublished opinions are not binding precedent in this circuit.*

PER CURIAM:

William C. Bond appeals from the district court's orders dismissing his action seeking relief under the Freedom of Information Act, 5 U.S.C.A. § 552 (West 2007 & Supp. 2008). We have reviewed the record and find no reversible error.* Accordingly, we affirm for the reasons stated by the district court. See Bond v. United States Attorney, No. 1:07-cv-01188-WDQ (D. Md. May 17 & Nov. 20, 2007). Additionally, we deny all of Bond's pending motions. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

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* Bond also appeals from the district court's denial of his motion for reconsideration, motion to recuse, and motion for leave to file an amended complaint. Upon review of the record, we find the district court did not err in denying Bond's motions.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, NORTHERN DIVISION

CIVIL NO.: WDQ-07-1188

WILLIAM C. BOND,

Plaintiff,

v.

UNITED STATES ATTORNEY,

Defendant.

Entered: February 13, 2008

MEMORANDUM OPINION

William C. Bond, *pro se*, sued the United States Attorney for the District of Maryland (the "USA") for the production of documents pursuant to a request under the Freedom of Information Act ("FOIA").[1] On November 20, 2007, the Court granted the USA's motion for summary judgment. Paper No. 49. Pending are Bond's (1) motion to alter or amend the judgment, (2) renewed motion to recuse, (3) motion to reinstate defendant U.S. District Court for the District of Maryland, (4) motion for leave to file a supplemental pleading, (5) motion to seal, and (6) a renewed motion to seal. For the following reasons, Bond's motions will be denied.

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[1] 5 U.S.C. § 552 (2000).

I. Background

On November 20, 2007, the Court concluded that the U.S. Attorney had adequately complied with Bond's FOIA request and had properly claimed several FOIA exemptions. Paper No. 48. The same day, the Court entered judgment against Bond. Paper No. 49. On December 6, 2007, Bond filed a motion to reinstate, a motion to seal, a motion to alter or amend the judgment, a motion for leave to file a supplemental pleading, and a renewed motion to recuse. Paper Nos. 50-54. On January 4, 2008, Bond filed a renewed motion to seal. Paper No. 58.

II. Analysis

A. Motion to Alter or Amend the Judgment

Bond argues that the Court must vacate its November 20, 2007 Order because the search for his FOIA request was unlawful and insufficient, and the USA is not entitled to summary judgment. The USA counters that Bond's motion is untimely and provides no basis for altering the Court's order.

Rule 59 provides that "[a] motion to alter or amend a judgment must be filed no later than 10 days after the entry of the judgment." Fed. R. Civ. P. 59(e). Judgment is entered when the civil docket reflects entry of a separate document from the opinion. Fed. R. Civ. P. 58(c)(2). The clock only begins to run on the day after judgment is entered. *See* Fed. R. Civ. P. 6(a).

Bond's motion to alter or amend the judgment is timely. The Court's November 20, 2007 Order was not entered until November 21, 2007. Because the following day was Thanksgiving, the clock did not begin to run until November 23, 2007. *See* Fed. R.

Civ. P. 6(a)(2). Excluding weekends, Bond had until December 6, 2007 to file his motion to alter or amend the judgment. *See id.* Bond's motions were received on December 6, 2007, and were timely.

Although timely, Bond's motion lacks merit. Under Rule 59(e), a court may grant a motion to alter or amend the judgment to: 1) accommodate an intervening change in controlling law; 2) account for new evidence previously unavailable; or 3) correct a clear error of law or prevent manifest injustice. *Bogart v. Chapell*, 396 F.3d 548, 555 (4th Cir. 2005). Rule 59(e) may not be used to reargue points that could have been made before judgment was entered. *See Hill v. Braxton*, 277 F.3d 701, 708 (4th Cir. 2002).

Bond contends that the Court's previous ruling was clearly erroneous and resulted in manifest injustice. But Bond's arguments do not alter the Court's conclusion that the USA's search was adequate and documents that were not released were appropriately withheld.[2] Given these findings, summary judgment was appropriate. Bond's baseless allegations of "public corruption" and bad faith on behalf of the Government do not warrant altering the judgment.

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[2] Bond maintains that the Court has not held the USA accountable because the Executive Office of the United States Attorney (the "EOUSA") performed the FOIA search and its representative, David Luczynski, provided a supporting declaration. The EOUSA handles all the FOIA requests for United States Attorney offices. First Luczynski Decl. ¶ 1. The EOUSA's search is equivalent to a search by the USA.

B. Renewed Motion to Recuse/Motion to Reinstate the Court as Defendant

Bond contends that the U.S. District Court for the District Court of Maryland should be reinstated in this matter, and then, because of an inherent conflict of interest, recuse itself. Bond has raised the recusal issue previously, and his request will again be denied. *See* Paper Nos. 3, 9. Courts are not covered by the FOIA. 5 U.S.C. § 551 (2000). Accordingly, Bond's motion to reinstate the Court as a defendant and motion to recuse will be denied.

C. Motion for Leave to File a Supplemental Pleading

Bond requests leave to file an amended complaint so that he may amend his FOIA requests with the recently discovered fact that the General Services Administration manages the federal courthouse and phone system. After a responsive pleading has been served, Rule 15(a) allows a party to amend only with leave of court. Fed. R. Civ. P. 15(a). Although the Federal Rules afford courts the discretion to give leave in the interests of justice, Bond has not demonstrated that his amendment would further that goal. Accordingly, Bond's motion for leave to file a supplemental pleading will be denied.

D. Motions to Seal

Bond contends that his motions should be filed under seal because his allegations are embarrassing to the Court and the USA. The USA counters that Bond has not demonstrated that the extraordinary remedy of sealing is warranted in this matter.

Local Rule 105(11) provides that a motion to seal must include a factual justification and an

explanation why alternatives would not suffice. D. Md. R. 105(11). Bond does not argue that the motions are confidential or contain privileged information. Indeed, many of the allegations in Bond's pending motions were included in his complaint and earlier motions, which were not filed with any protective measures. As Bond has not demonstrated that his pending motions should be sealed, his motions will be denied.

III. Conclusion

For the reasons discussed above, Bond's motions will be denied.

February 13, 2008
Date

/s/
William D. Quarles, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MARYLAND,
NORTHERN DIVISION

CIVIL NO.: WDQ-07-1188

WILLIAM C. BOND,

Plaintiff,

v.

UNITED STATES ATTORNEY,

Defendant.

Entered: November 20, 2007

MEMORANDUM OPINION

William C. Bond, *pro se*, sued the United States Attorney for the District of Maryland ("USA")[1] for the production of documents pursuant to a request under the Freedom of Information Act ("FOIA").[2] Pending are USA's motion to dismiss, or in the alternative for summary judgment, and Bond's motion to compel the production of a *Vaughn* Index,[3]

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[1] On May 17, 2007, the United States District Court for the District of Maryland was dismissed from this action. Paper No. 3.

[2] 5 U.S.C. § 552 (2000).

[3] When a government agency claims a FOIA exemption and denies a citizen's request for government records, the agency must provide a detailed affidavit that "permit[s] the court system effectively and efficiently to evaluate the factual nature of disputed information." *Vaughn v. Rosen*, 484 F.2d 820, 826 (D.C. Cir. 1973).

motion to strike a declaration, and motion for leave to file a surreply. For the following reasons, USA's motion will be granted, and Bond's motions will be denied.

I. Background

On February 8, 2007, Bond made a formal FOIA request to USA for documents relating to Bond's communications with USA in 2004 and 2005. Compl. ¶ 5. On March 9, 2007, the Executive Office for United States Attorneys ("EOUSA") denied Bond's request. *Id.*¶ 6. Bond appealed to the Office of Information and Privacy ("OIP"), which affirmed the denial of Bond's request as to all third parties, but remanded the request to EOUSA for a search of documents relating to Bond himself. First David Luczynski Decl. Ex. D. On June 19, 2007, EOUSA processed Bond's request. EOUSA's search resulted in twelve pages of documents related to Bond. One page was released in part to Bond and eleven pages were withheld.

II. Analysis

A. Motion for Summary Judgment

1. Standard of Review

Under Rule 56(c), summary judgment is appropriate when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A dispute about a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

"As a general rule . . . FOIA determinations should be resolved on summary judgment." *Hanson v. U.S. Agency for Int'l Dev.*, 372 F.3d 286, 290 (4th Cir. 2004). The court must view the facts and reasonable inferences drawn therefrom "in the light most favorable to the party opposing the motion." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (*quoting United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962) (per curiam)). The opposing party, however, must produce evidence upon which a reasonable fact finder could rely. *Celotex*, 477 U.S. at 324. The mere existence of a "scintilla" of evidence is insufficient to preclude summary judgment. *Anderson*, 477 U.S. at 252. 2. FOIA Provisions and Review Mechanism

The FOIA requires federal agencies upon request to deliver records that are reasonably described and requested in accordance with published rules. 5 U.S.C. § 522(a)(3)(A) (2000). Despite this mandate, there are limited exemptions to compelled disclosure. *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1976). There are nine exemptions to FOIA record disclosure. 5 U.S.C. § 522(b). In accordance with FOIA's policy goal of disclosure, the exemptions must be narrowly construed. *Rose*, 425 U.S. at 361.

To prevail on a summary judgment motion, the agency must demonstrate that it conducted the search in good faith and used methods that can reasonably be expected to produce the requested information. *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). The agency must prove that the materials requested were properly withheld. *U.S. Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 142 n.3 (1989). To withhold requested documents under a FOIA exemption, the agency must describe

its rationale with reasonable specificity. *Hanson*, 372 F.3d at 290. The agency must submit affidavits or declarations that describe the search performed and affirm that responsive databases were searched, so as to give the FOIA requester an opportunity to challenge the efficacy of the agency's actions. *Oglesby*, 920 F.2d at 68.

Bond requested all documents pertaining to discussions he had with USA in 2004 involving the misconduct of an Article III judge.[4] After a search, Bond received one of twelve pages from seven responsive documents. EOUSA claimed three exemptions as the basis for withholding the materials. *See* 5 U.S.C. §§ 552(b)(5), 552(b)(7)(C), 552a(j)(2). USA has submitted the declaration of David Luczynski, Attorney Advisor at the EOUSA, and a *Vaughn* Index to explain its rationale for claiming the exemptions.

3. Adequacy of the EOUSA Search

USA argues that the search performed in response to Bond's request was adequate. Specifically, USA has provided a detailed description of the terms and databases searched and the responsive documents recovered, and contends that the search was reasonable and consistent with

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[4] 4 Bond's initial request to USA included broad claims for documents concerning various third parties, including judges, lawyers, and related criminal investigations. Citing 5 U.S.C. § 552(b)(7)(C), OIP denied Bond's request to the extent that he sought any information concerning third parties. Bond seeks the same material in this Court. Compl. ¶ 5. As Bond has not demonstrated any "overriding public interest" in the disclosure of this information, OIP properly denied his request on these grounds.

applicable law. Bond disagrees and argues that EOUSA should have performed a manual search in addition to a search of computer records.

A reasonable search by the agency requires only the production of documents that are responsive to the request; the agency is not required to search all possible records repositories. *See Oglesby*, 920 F.2d at 68. However, the agency must produce more than conclusory affidavits stating that a search was performed in a manner "consistent with customary practice and established procedure." *Ethyl Corp. v. EPA*, 25 F.3d 1241, 1246-47 (4th Cir. 1994).

EOUSA handles any FOIA requests for materials from the Department of Justice or United States Attorney offices. First Luczynski Decl. ¶ 1. EOUSA forwarded Bond's request to the FOIA contact at USA. *Id.* ¶ 9. The contact searched the Public Access to Court Electronic Records ("PACER") and the Legal Information Office Network System ("LIONS") for materials related to Bond's request. *Id.* ¶ 10.[5] The FOIA contact used "Bond" as a search term and recovered responsive documents. *Id.*

EOUSA searched electronic databases likely to contain information about Bond's criminal referral. Although Bond contends that a "manual effort to search for records" is required, the FOIA affords federal agencies the discretion to choose the most suitable search method. *See* 5 U.S.C. § 552(a)(3)(D) ("[T]he term 'search' means to review, manually *or* by *automated* means . . . .") (emphasis added). The

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[5] LIONS is the computer system that USA uses to track materials for cases and investigations. First Luczynski Decl. ¶ 11.

Luczynski Declaration demonstrates the requisite knowledge of Bond's request and EOUSA search protocols to allow Bond to challenge the adequacy of EOUSA's actions. EOUSA made a good faith effort to find materials responsive to Bond's FOIA request. Accordingly, EOUSA's search was adequate.

4. FOIA Exemption 5

USA asserts that eleven pages of the materials relating to Bond's request were subject to attorney work product and deliberate process privileges and were therefore withheld.[6] Bond contends that releasing the documents is in the public interest, and that if the materials are not released directly to him, they should be placed before the Court for *in camera* review.[7]

Exemption 5 excludes from disclosure "inter-agency or intraagency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). Courts have found attorney work product privileged under Exemption 5, *see NLRB v.*

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[6] The Privacy Act authorizes a federal agency to promulgate rules to exempt its record systems from compelled disclosure. *See* 5 U.S.C. § 552a(j)(2) (2000). As USA's criminal case file system is compiled for law enforcement purposes and is catalogued by name of individuals or organizations, First Luczynski Decl. ¶¶ 10-12, the system is exempt from the Privacy Act. USA is therefore granted summary judgment to the extent that Bond's claims rest on the Privacy Act.

[7] Bond also request an evidentiary hearing and additional discovery. The Court has jurisdiction under the FOIA to determine whether an agency has wrongfully withheld agency records. 5 U.S.C. § 552(a)(4)(B). Bond has not demonstrated that a hearing or additional discovery would aid the Court in resolving the dispositive issues.

Sears, Roebuck & Co., 421 U.S. 132, 154 (1975), as well as the predecisional or deliberative processes of agency decisionmaking. *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). Attorney work product covers those documents that are produced in anticipation of litigation and contain an attorney's legal theories and strategies. *Hickman v. Taylor*, 329 U.S. 495, 510-11 (1947). The deliberative process privilege covers those documents that are generated before agency policy is implemented and reflect a consultative decisionmaking process. *Coastal States*, 617 F.2d at 866.

In the *Vaughn* Index, EOUSA asserts that six of the documents contain written communications between Assistant United States Attorneys ("AUSAs") and other lawyers, other AUSAs, or Bond himself and are covered under the attorney work product privilege. Four of the six documents are protected by the attorney work product privilege because they reflect legal theories and strategies of USA. Two of the documents, however, are drafts of letters to Bond addressing legal matters raised by him. As drafts, they reflect the preliminary views of USA. These documents--although labeled "Attorney Work Product Privileged and Confidential," First Luczynski Decl. ¶ 19—clearly are within the deliberative process privilege. *See Coastal States*, 617 F.2d at 866.

Bond claims that there is an "overriding public interest" in disclosure of the withheld documents because his 2004 criminal referral dealt with public corruption. The overriding public interest inquiry relates to exemptions under 5 U.S.C. 552(b)(C)(7), not Exemption 5. *See Nation Magazine v. U.S.*

Customs Serv., 71 F.3d 885, 895 (D.C. Cir. 1995). Regardless, Bond's allegations of public corruption are not compelling indicia that USA engaged in illegal activity by declining to prosecute his referral. *See Davis v. U.S. Dep't of Justice*, 968 F.2d 1276, 1282 (D.C. Cir. 1992). Indeed, beyond Bond's affidavits, the only evidence he has produced related to his referral are several e-mails from USA and a USA memorandum notifying Bond of the decision to decline prosecution. Def.'s Mem. Supp. Opp'n Ex. 4. Bond's contention of an overriding public interest does not overcome USA's assertion of Exemption 5.

Bond's request for *in camera* review will be denied because EOUSA's *Vaughn* Index is an effective proxy for the withheld documents. A *Vaughn* Index is "a surrogate for the production of documents for *in camera* review, designed to enable the district court to rule on a privilege without having to review the document itself." *Ethyl*, 25 F.3d at 1249. The government agency is directed to provide "a detailed justification for its exemption and index the documents against the justification, fragmenting the documents into segregable parts." *Id.* at 1250. EOUSA's *Vaughn* Index lists each document, describes its contents and the reasons for claiming an exemption, and whether the exempted information is segregable. Based on this detailed information, no reasonable factfinder could conclude that EOUSA failed to act in good faith in claiming the exemption.[8] 5. FOIA Exemption 7(C)

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[8] On August 8, 2007, Bond filed a renewed motion to compel USA to produce a *Vaughn* Index. The Court previously denied without prejudice Bond's motion to compel the production of a *Vaughn* Index. Paper No. 9. EOUSA produced a *Vaughn* Index

USA contends that Exemption 7(C) applies to an e-mail uncovered by its search. Specifically, USA redacted the name of an e-mail recipient pursuant to 5 U.S.C. § 552(b)(7)(C). Bond counters that it is in the public interest to release any information related to his claims of corruption by government officials.

Exemption 7(C) protects records compiled for law enforcement purposes from compelled disclosure that "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C). Although FOIA allows citizens a means to determine "'what their Government is up to,'" *U.S. Department of Justice v. Reporters Committee for Freedom of Press*, 489 U.S. 749, 773 (1989), when disclosure of information falls under Exemption 7(C), the interest in disclosure must be balanced with the personal privacy of citizens. *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 172 (2004). To overcome the privacy concerns of Exemption 7(C), the FOIA requester must demonstrate that the public interest is significant and that the requested information is likely to advance that interest. *Favish*, 541 U.S. at 172. The deletion of names of third parties and law enforcement personnel from records that are compiled for law enforcement purposes is within Exemption 7(C). *Neely v. FBI*, 208 F.3d 461, 463-65 (4th Cir. 2000); *Dunkelberger v. Dep't of Justice*, 906 F.2d 779, 781 (D.C. Cir. 1990).

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on September 4, 2007, to which Bond objected as being incomplete. The Court is satisfied that EOUSA has provided an adequate *Vaughn* Index. Therefore, Bond's motion to compel will be denied as moot.

EOUSA released to Bond an e-mail exchange between himself and an AUSA, redacting only the name of a third-party recipient of the e-mail. Bond has not demonstrated that the release of the third party name is in the public interest. Rather, Bond seizes on a statement in the e-mail that an AUSA was "looking for the declin [sic] memo" as demonstrating that a final report was generated concerning his criminal referral and should be disclosed. USA and EOUSA have established the adequacy of their search for records responsive to Bond's request and have properly rejected Bond's request for information concerning third parties. Although Bond's request relates to matters of public interest, Bond has not demonstrated that the release of the exempted name would likely further that interest.

6. Segregability

Records containing information that is exempt from disclosure must be analyzed to determine whether any reasonably segregable nonexempt portions may be released. 5 U.S.C. § 552(b). Segregable information that is "inextricably intertwined" with exempt material need not be disclosed. *Johnson v. Executive Office for U.S. Attorneys*, 310 F.3d 771, 776 (D.C. Cir. 2002). The *Vaughn* Index and Luczynski Declaration demonstrate that EOUSA and USA have withheld only information exempt under the claimed FOIA provisions and that all reasonably segregable material has been released to Bond.

B. Motion to Strike

Bond moves to strike the Luczynski Declaration, primarily because it refers to a case entitled *United*

States v. Bond. USA responds that the Declaration inadvertently referred to the wrong case name, and instead should properly have been *State of Maryland v. William C. Bond*. USA has corrected the error made in the First Luczynski Declaration, and Bond's other arguments that the Declaration is misleading concern harmless error or are without merit. Accordingly, Bond's motion to strike the Luczynski Declaration will be denied.

C. Motion for Leave to File Surreply

"Unless otherwise ordered by the Court, surreply memoranda are not permitted to be filed." D. Md. R. 105(2)(a). Bond contends that he needs an additional opportunity to respond to an updated *Vaughn* Index that was filed by USA on October 22, 2007. Paper No. 44. The Court did not rely on this version of the *Vaughn* Index in its decision, and Bond's objections to earlier versions have been sufficiently discussed in his accompanying motions and memoranda. Accordingly, Bond's motion for leave to file a surreply will be denied.

III. Conclusion

For the above reasons, USA's motion for summary judgment will be granted, and Bond's motions will be denied.

November 20, 2007

/s/
William D. Quarles, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, NORTHERN DIVISION

CIVIL NO.: WDQ-07-1188

WILLIAM C. BOND,

Plaintiff,

v.

UNITED STATES ATTORNEY,

Defendant.

Entered: September 4, 2007

MOTION "DENIED" THIS 4th DAY OF SEPTEMBER, 2007
/s/ William D. Quarles, Jr.
William D. Quarles, Jr.
United States District Judge

MOTION TO DISQUALIFY ATTORNEY

1. The United States Attorney, District of Maryland is a Defendant in this Case.

2. The United States District Court for the District of Maryland is Defendant in this Case.

3. There is a clear conflict of interest between the United States Attorney, District of Maryland and/or the Department of Justice and the United States District Court for the District of Maryland.

4. Allen F. Loucks, Esq., was the acting United States Attorney during the times of Plaintiffs criminal referral to the US Attorney and the decision made thereof.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

WILLIAM C. BOND

Plaintiff,

v.

UNITED STATES ATTORNEY
UNITED STATES DISTRICT COURT

Defendants.

CIVIL ACTION NO. WDQ-07-1188

ORDER

On May 17, 2007, Plaintiff's fee-paid *pro se* "Complaint for Injunctive Relief" was dismissed in part, the undersigned concluding that his Freedom of Information Act ("FOIA) complaint should be dismissed as to Defendant United States District Court ("USDC") under 5 U.S.C. § 551. Paper No. 3. On May 24, 2007, Plaintiff filed a Motion for Reconsideration, seemingly claiming that the USDC is a proper Defendant as it "made Plaintiff's FOIA Request to the Court subject to the FOIA by processing it, and the information and records sought, through the Executive Branch." Paper No. 5. He argues that the USDC voluntarily made the Department of Justice their agent. *Id.* The Motion has been read, considered, and shall be denied for those reasons previously stated by the Court.

On June 4, 2007, Plaintiff filed a Motion to Compel the Preparation of a Vaughn Index. Paper No. 8. He requests that this Court order Defendant to provide him "an itemized, indexed inventory of every agency record or portion thereof responsive to Plaintiff's request....in accordance with the indexing requirements of Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973)." Paper No. 8.

The FOIA imposes a duty on federal agencies to disclose records and information in their possession. It provides that:

> [E]ach agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

See 5 U.S.C. § 552(a)(3).

However, the statute establishes nine specific exemptions from its disclosure requirement, *see* 5 U.S.C. § 552(b), and places on the government the burden of proving entitlement to one of these exemptions. *See* § 552(a)(4)(B). In *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), the Court of Appeals for the District of Columbia set forth procedures to correct imbalances in the information-providing process associated with the FOIA. It held that "a relatively detailed analysis in segments" was needed, that disclosable information must be separated and released from a document containing exempt information, and that the agency's index should "subdivide the document under consideration into manageable parts crossreferenced to the

relevant portion of the Government's justification." *Id.* at 826, 827.

Plaintiff seeks to compel the production of a *Vaughn* index, which is a list that describes each document withheld by an agency with sufficiently detailed information to enable a district court to rule whether it falls within an exemption provided by FOIA. *See Ethyl Corp. v. United States Environmental Protection Agency*, 25 F.3d 1241, 12144 n. 1 (4th Cir. 1994). There is no showing at present, however, that Defendant's alleged non-compliance with the FOIA requires the filing of such an index. *See* Paper Nos. 1 & 5. The Motion shall be denied without prejudice.

Accordingly, it is this 6th day of June, 2007, by the United States District Court for the District of Maryland, hereby ORDERED that:

1. Plaintiff's Motion for Reconsideration (Paper No. 5) IS DENIED; and

2. Plaintiff's Motion to Compel Preparation of a Vaughn Index (Paper No. 8) IS DENIED WITHOUT PREJUDICE.

/s/
William D. Quarles Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

WILLIAM C. BOND

Plaintiff,

v.

UNITED STATES ATTORNEY
UNITED STATES DISTRICT COURT

Defendants.

CIVIL ACTION NO. WDQ-07-1188

Entered: May 17, 2007

ORDER

Plaintiff William C. Bond, a resident of Baltimore, Maryland, filed this fee paid, pro se "Complaint for Injunctive Relief' on May 4, 2007. Citing the Freedom of Information Act ("FOIA), 5 U.S.C. § 552(a)(4)(B), Bond seeks the production of agency records related to: (1) a "criminal referral made to the U.S. Attorney for Maryland in 2004 concerning alleged crimes committed in a copyright case in U.S. District Court for Maryland in 2001 (Civil Action No. MJG-01-CV-2600)"; (2) the "U.S. Court owned" telephone records of an Article III judge; and (3) the "'Attorney Disqualification Motions' in the 'Bromwell Case' currently set for

September Trial in U.S. District Court for Maryland."[1] Paper No. 1.

Plaintiff first claims that the Office of the United States Attorney for the District of Maryland is in possession of the documents he seeks and that by letter dated February 8, 2007, he requested access to records relating to allegations in his 2004 "criminal referral."[2] *Id.* He states that on March 9, 2007, he was denied access to the requested information on the grounds that it was exempt from disclosure

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[1] In addition, Plaintiff has filed a motion to recuse this court from reviewing this action, claiming that it "would be impossible for the court to remain impartial when it is, itself, a Defendant." Paper No. 2. That motion, which asks that the case be assigned to a visiting judge or transferred to the U.S. District Court for the District of Columbia, shall be denied.

[2] Plaintiff claims that he sought all information in possession of the U.S. Attorney relating to: (1) Plaintiff's allegation that counsel and others "tampered" with the court in *Bond v. Blum, et al.*, Civil Action No. MJG-01-2600 (D. Md.); (2) Plaintiff's allegation that counsel, this court, and others "tampered" with a state court judge in *State v. Bond*, (Cir. Ct. for Baltimore City 2001); (3) the theft of a handgun from Plaintiff's home in April of 2001 and the manufacturing or continuation of criminal charges in *State v. Bond*, (Cir. Ct. for Baltimore City 2001); (4) Plaintiff's allegation that defendants, attorneys, witnesses, and/or unknown parties acted to commit and suborn perjury, obstruct justice, tamper with witnesses, or commit any other illegal act to deprive him of his property rights and due process in the manuscript at issue in *Bond v. Blum, et al.*, Civil Action No. MJG-01-2600 (D. Md.); (5) attempts by Kenneth Blum, or any persons associated with him, to influence the Court of Special Appeals of Maryland or Court of Special Appeals Judge Peter Krauser by contributing to a political action committee and the connection, if any, between these donations and receipts of monies by Maryland Congressmen; and (6) William C. Bond, Kenneth Blum Sr., or any other parties named in the "criminal referral." Paper No. 1 at 2-4.

under 5 U.S.C. §§ 552a, 552(b)(6), and 552(b)(7)(c). Paper No. 1 at 4. Plaintiff claims that he appealed the denial of the request on March 16, 2007, and the appeal was denied on April 12, 2007. *Id.*

Plaintiff next claims that by letter to the U.S. District Court for the District of Maryland dated March 22, 2007, he requested access to the "U.S. Court owned" telephone records of an Article III judge and the "'Attorney Disqualification Motions' in the 'Bromwell Case' currently set for September Trial in U.S. District Court for Maryland before Judge Motz." *Id.* at 5. He states that the request was "turned over" to the Office of the U.S. Attorney for Maryland, which placed the request into the Department of Justice's ("DOJ") FOIA Request System. *Id.* Plaintiff states that his request was denied by the DOJ on April 24 and 25, 2007. *Id.* at 6. He claims that it was illegal for the DOJ to process his requests on behalf of the U.S. Court and that the U.S. Court is in default of his March 22, 2007 request and therefore must produce the requested documents immediately. *Id.*

Under the FOIA, a federal agency shall make available to any person records that the person reasonably describes in a request to the agency in accordance with published rules governing such requests. *See* 5 U.S.C. § 552(a)(3). The law under statute is clear. Federal courts, along with the clerks offices that receive court pleadings, are not "agencies" covered under the FOIA. *See* 28 U.S.C. § 551; *Smith v. United States Dist. Ct.*, 956 F.2d 647, 649 n.1 (7th Cir. 1992); *see also Cook v. Willingham*, 400 F. 2d 885, 885-86 (10th Cir. 1968); *Harris v. United States*, 121 F. R. D. 652, 654 (W.D. N.C. 1988). Consequently, the Complaint against the U.S.

District Court for the District of Maryland shall be dismissed.

Plaintiff's FOIA Complaint shall, however, proceed as to Defendant United States Attorney for the District of Maryland.[3] Plaintiff paid the $350.00 civil filing fee and therefore bears responsibility for effecting service of process on this Defendant. Pursuant to Fed. R. Civ. P. 4(c)(2), service of a summons and complaint may be effected by any person who is not a party and who is at least 18 years of age. Plaintiff is reminded that under Fed. R. Civ. P. 4(l), the person effecting service of the summons and Complaint must promptly notify the Court,[4] through an affidavit, that he or she has served the remaining Defendant.

Pursuant to Fed. R. Civ. P. 4(m) and Local Rule 103.8.a., if Plaintiff has not effected service of process within 120 days of filing the complaint, the Court may enter an order asking Plaintiff to show

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[3] The case shall proceed in the normal course, the undersigned seeing no reason to expedite matters or to grant injunctive relief at this time under Fed. R. Civ. P. 65(a). *See Blackwelder Furniture Co. v. Seilig Manufacturing Co.*, 550 F.2d 189, 195-96 (4th Cir. 1977); *see also Direx Israel, Ltd. v. Breakthrough Medical Corporation*, 952 F.2d 802, 812 (4th Cir. 1992).

[4] Pursuant to Fed. R. Civ. P. 4(i), Plaintiff must effect service of summons and Complaint on the Attorney General of the United States, Department of Justice, 10th & Constitution Avenue, N.W., Washington, D.C. 20530; and United States Attorney for the District of Maryland Rod Rosenstein, 36 S. Charles Street, 4th Floor, Baltimore, Maryland 21201. If there is no record in the Court file that service was effected on Defendant, Plaintiff risks dismissal of his cause of action. If Plaintiff does not use a private process server, and instead uses certified or registered mail to make service, he must file with this Court the United States Post Office acknowledgment as proof of service.

cause why the claims should not be dismissed. If Plaintiff fails to show cause within fourteen (14) days of the entry of the order or such other time as may be set by the Court, the case shall be dismissed without prejudice.

Accordingly, it is this 17th day of May, 2007, by the United States District Court for the District of Maryland, hereby ORDERED that:

1. The Complaint against Defendant United States District Court for the District of Maryland IS DISMISSED;
2. The Complaint SHALL PROCEED as to Defendant United States Attorney for the District of Maryland;
3. Plaintiff's Motion for Recusal (Paper No. 2) IS DENIED;
4. The Clerk SHALL TAKE ALL NECESSARY STEPS to prepare and issue summons to Plaintiff; and
5. The Clerk SHALL MAIL this Order to Plaintiff.

/s/
William D. Quarles Jr.
United States District Judge